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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,005	11/19/2003	Krista Marie Wickens	13914.928	8754
22913	7590	09/01/2005	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,005

Applicant(s)

WICKENS, KRISTA MARIE

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Jan 14, 04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-39 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 10 is objected to because of the following informalities: "ball" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- a. Claims 1-4, 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wren and further in view of Phillips '992 and Phillips '000. As to claim 1, Wren discloses a partially stabilized device having a flexible bladder with a degree of curvature (30) and filler disposed within the bladder (18). Wren does not teach the device configured and arranged to support a user and is silent with respect to the sand being loose, nor does Wren disclose the volume of the filler less than 75 percent of the volume of the overall bladder. Thus, Phillips '992 teaches the device to support a user while exercising muscles, and loose filler material that moves relative to the bladder being moved. Regarding the language, "for performing core body exercises and has not been given

patentable weight because the limitations are purely functional in nature and do not recite any structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wren in view of the teaching of Phillips '992 such that an exercise device and support a user and loose filler moves relative to the movement of the device for stabilization of the device. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Additionally, Phillips '000 teaches a predetermined volume for the filler. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wren in view of the teaching of Phillips '000 such that a specific volume of filler provides flexibility of movement relative to the bladder. As to claim 2, the filler is sand (fig. 3). As to claims 3-4, the language has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claims 8-9, the bladder is spherical, oval and egg shaped (figs. 1-2).

b. Claims 5-7 and 11-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wren, Phillips and Phillips as applied to claim 1 above. Wren discloses all of the limitations of the claimed invention except for specific ratios between weight and volume, filler color and size, filler versus volume, dimension of diameter, and filler weight. At the time the invention was made, it would have

been an obvious matter of design choice to a person of ordinary skill in the art to modify the device of Wren by specifying the ratios, weight and dimensions as noted above because Applicant has not disclosed that the specific ratios, weight and dimensions provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any ratio, weight and dimension that is capable of performing in the same capacity as the preference of the applicant. Therefore, it would have been an obvious matter of design choice to modify Wren to obtain the invention as specified in the claims.

c. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wren, Phillips and Phillips as applied to claim 1 above, and further in view of Jackson. Wren discloses all of the limitations of the claimed invention except a texturized surface. Thus, Jackson teaches a texturized surface (col. 4, lines 45-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wren in view of the teaching of Jackson such that a texturized surface is capable of providing a non-slip grip for a user to hold.

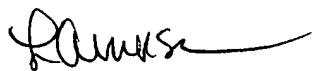
Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the references cited on PTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "L. Amerson", with a long horizontal flourish extending to the right.

L. Amerson